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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,383	07/24/2003	James L. Kroening	P1905US00	9803
24333	7590	10/02/2008		
GATEWAY, INC. ATTN: Patent Attorney 610 GATEWAY DRIVE MAIL DROP Y-04 N. SIOUX CITY, SD 57049			EXAMINER PATEL, KAUSHIKKUMAR M	
			ART UNIT 2188	PAPER NUMBER
			MAIL DATE 10/02/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/626,383	<b>Applicant(s)</b> KROENING, JAMES L.	
	<b>Examiner</b> KAUSHIKKUMAR PATEL	<b>Art Unit</b> 2188	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 23-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 23-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This Office Action is in response to the Applicant's communication filed June 06, 2008 in response to PTO Office Action mailed March 06, 2008. The Applicant's remarks and amendments to the claims and/or the specification were considered with the results that follow.
2. In response to the last Office Action, no claims have been amended. Claims 23-45 have been added. Claims 1-22 have been canceled. As a result, claims 23-45 remain pending in this application.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 23-45 have been considered but are moot in view of the new ground(s) of rejection.

### ***Admitted Prior Art***

4. Applicant has not traversed the Examiner's assertion of Official Notice with regard to the rejection of claim 2 in the previous office action, therefore the well-known facts presented in these rejections are taken to be admitted prior art. These facts are summarized as follow: Downloading the utilities via a network or the internet is well known in the art.

### ***Claim Objections***

5. Claim 41 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

A proper dependent claim shall not conceivably be infringed by anything, which would not also infringe the basic claim. See MPEP § 608.01(n), sec. III. The dependent claim 41 recites a controller to download a/the directory from the backup server and a create utility which also is downloaded and creates the protected area on storage device attached to the electronic device. Here as noted above, downloading data from backup storage and creating the protected area on the storage device will infringe limitations of dependent claim 41, without infringing the limitations of base claim, e.g. claim 38, which requires copying contents of protected area to the user area of the storage device and further copying user area to the backup storage device. Thus, it is clear that one can infringe limitations of dependent claim 41, without infringing the limitations of the base claim 39, accordingly, claim 41 can be considered as improper dependent claim.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 23-32 and 35-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 23 and 30 recites the limitation "a user area of a first storage device" in lines 5 and 6 respectively. The limitation is open to interpretation as it is not clear whether the limitation refers to the limitation recited in lines 3-4 and 4-5 of the claims or the different one?

Claim 35 recites the limitation "said directory" in line 3. There is insufficient antecedent basis for the limitation in the claim. Claim 35 further recites the limitations "a directory" and "a first storage device" in lines 5, 11 and 13. These limitations are open to interpretation as it is not clear whether they refer to the limitations recited in lines 2 and 3 of the claim or different one?

Claims 24-29, 31, 36 and 37 are also rejected due to their dependency on rejected claim.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 23-28 and 30-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maffezzoni (US 6,901,493).

As per claims 23 and 30, Maffezzoni teaches a method and computer readable media (claim 10) of creating a backup copy of data comprising:

booting to a first area of a first storage device (Maffezzoni, fig. 2, item 106, fig. 4, item 106b);

copying contents of the first area of a first storage device to a second area of the first storage device (Maffezzoni, col. 4, lines 43-50, col. 8, lines 15-16). Maffezzoni teaches backing up data from one partition/area (user) of hard disk to another partition (hidden or protected area) of hard disk but fails to teach copying content of protected/hidden area to user area, however it is readily apparent to one of ordinary skill in the art at the time of the invention that originally the Operating System and data are stored in first area (user partition) of the disk and the backup copy is made to the second partition (protected or hidden partition) of the disk, such that in case of logical crash of one of the partition, the system remains operational from the other partition of the disk (Maffezzoni, col. 3, lines 13-22). Thus, it would have been obvious to one having ordinary skill in the art to make a backup copy of protected area of disk to user area of disk (i.e. make two copies as taught by Maffezzoni) to keep the system operational from the same hard drive in case of logical crash of the one of the partition (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40).

Maffezzoni further teaches booting to user area of the first storage device (col. 2, lines 16-31) and saving user area to a second storage device (Maffezzoni, col. 8, lines 15-18). Maffezzoni fails to teach copying both protected area and user area to another disk, but he teaches that if there is a physical crash of the hard disk then data can not

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be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device so that data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

As per claims 24 and 31, Maffezzoni teaches the backup program performing copying function (Maffezzoni, col. 4, lines 51-54). Maffezzoni fails to teach downloading the utility as required by the claim, but downloading utility software via a network or internet is known in the art and Examiner takes official notice of the fact, because keeping software centrally at one place and then distributing or downloading to client computers makes upgrading and maintenance of the software more efficient and reliable.

As per claims 25 and 26, Maffezzoni teaches that the user area of the storage devices are saved to the second storage devices directly connected to electronic device or indirectly connected, e.g. attached to the backup server (Maffezzoni, col. 5, lines 11-35).

As per claim 27, Maffezzoni teaches booting to protected area (Maffezzoni, col. 5, lines 48-50).

As per claim 28, Maffezzoni teaches rebooting to user area after the copying and before the saving (Maffezzoni, col. 8, lines 6-9).

Claims 32 is combination of claims 27 and 28 thus claim 32 is rejected under same rationales as applied to claims 27 and 28 above.

10. Claims 29 and 38-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maffezzoni (US 6,901,493) as applied to claim 23 above and further in view of Whiting et al. (US 2002/0107877).

As per claim 29, Maffezzoni fails to teach a directory for storing the data from protected area of the storage device, Whiting however teaches backup directory for storing backup data in the storage device (Whiting, figs. 2 and 3, pars. [0033] – [0035]). It would have been obvious to one having ordinary skill in the art at the time of the invention to provide directory for backup data as taught by Whiting in the system of Maffezzoni for easy management of data because directories and folders allows grouping of similar data and thus data can be easily managed.

As per claim 38, Maffezzoni teaches a backup server comprising:  
a backup storage device (col. 5, lines 20-35);  
a read utility to be executed at an electronic device (col. 4, lines 51-54, it is inherent to have an electronic device (computer) to accommodate the hard disk).

Maffezzoni fails to teach downloading the utility as required by the claim, but downloading utility software via a network or internet is known in the art and Examiner takes official notice of the fact, because keeping software centrally at one place and then distributing or downloading to client computers makes upgrading and maintenance of the software more efficient and reliable.



Maffezzoni further teaches wherein the read utility is to copy contents of a first area of a first storage device to a second area of the first storage device (Maffezzoni, col. 4, lines 43-50, col. 8, lines 15-16). Maffezzoni teaches backing up data from one partition (user) of hard disk to another partition (hidden or protected area) of hard disk but fails to teach copying content of protected area to user area, however it is readily apparent to one of ordinary skill in the art at the time of the invention that originally the Operating System and data are stored in first area (partition) of the disk and the backup copy is made to second partition of the disk, such that in case of logical crash of one of the partition, the system remains operational from the other partition of the disk (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40). Thus, it would have been obvious to one having ordinary skill in the art to make a backup copy of protected area of disk to user area of disk (i.e. make two copies as taught by Maffezzoni) to keep the system operational from the same hard drive in case of logical crash of the one of the partition (Maffezzoni, col. 3, lines 13-22, Ding, col. 1, line 57 – col. 2, line 40).

Maffezzoni further teaches saving user area to a second storage device (Maffezzoni, col. 8, lines 15-18). Maffezzoni fails to teach copying both protected area and user area to another disk, but he teaches that if there is a physical crash of the hard disk then data can not be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device

so that data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

Maffezzoni fails to teach a directory for storing the data from protected area of the storage device, Whiting however teaches backup directory for storing backup data in the storage device (Whiting, figs. 2 and 3, pars. [0033] – [0035]). It would have been obvious to one having ordinary skill in the art at the time of the invention to provide directory for backup data as taught by Whiting in the system of Maffezzoni for easy management of data because directories and folders allows grouping of similar data and thus data can be easily managed.

Claims 39 and 40 are rejected under same rationales as applied to claims 27 and 28 above.

As per claim 41, Maffezzoni teaches a controller to download the directory from the backup storage device to the user area of the storage device (here Maffezzoni teaches restoring data from backup storage to hard drive of the computer system, col. 5, lines 20-35, teaches backup storage device and col. 5, lines 58-60 teaches restoring the directory from backup device to appropriate partition of the hard disk, where it is apparent that storage devices includes controller);

a create utility to be downloaded and executed at the electronic device, wherein the create utility is to create the protected area on the storage device (col. 6, lines 3-30, teaches defining hidden partition on the disk, where it is inherent to have utility to define hidden partition).

Claims 42-45 are rejected under same rationale as applied to claims 38-41 above.

11. Claim 33 is rejected under **35 U.S.C. 103(a)** as being unpatentable over Applicant's Admitted Prior Art (APA herein after), Kawano et al. (US 2003/0229768) (Kawano herein after).

As per claim 33, restoring a protected area directory from a first storage device to a user area of a second storage device (APA teaches saved contents can be restored to the electronic device (e.g. data can be restored from back up storage (first storage) to the storage connected to the device (second storage) (page 2, lines 27-28) and also as per APA operating system is unable to access the HPA, thus APA inherently teaches restoring the data in user space of the second (attached to device) storage).

APA fails to teach copying protected area directory (data) from the user space of second storage to protected area of the second storage. Kawano teaches the data/directory in the user area is copied to protected area (paragraph [0039]). It would have been obvious to one having ordinary skill in the art at the time of the invention to have modified the restoring method of APA by the teachings of Kawano so that the data can be protected from viruses and system can be recovered without using removable disks or storage devices (Kawano, paragraph [0008]).

12. Claim 34 is rejected under **35 U.S.C. 103(a)** as being unpatentable over Applicant's Admitted Prior Art (APA herein after) and Kawano et al. (US 2003/0229768)

(Kawano herein after) as applied to claim 33 above and further in view of Maffezzoni (US 6,901,493).

APA and Kawano fail to teach creating protected area before copying the contents. Maffezzoni teaches creating protected area before copying (Maffezzoni, fig. 3, item 104a). It would have been obvious to one having ordinary skill in the art at the time of the invention to create protected area on the hard disk as taught by Maffezzoni in the system of APA and Kawano to backup data into hidden (protected) partition to avoid accidental deletion of important data (Maffezzoni, col. 6, lines 10-12) and to restore data in case of logical crash of hard disk partition (Maffezzoni, col. 5, lines 40-41).

13. Claims 35-37 are rejected under **35 U.S.C. 103(a)** as being unpatentable over Kawano et al. (US 2003/0229768) (Kawano herein after), Maffezzoni (US 6,901,493) and Whiting et al. (US 2002/0107877).

As per claim 35, Kawano teaches an electronic device (fig. 1, par. [0031], taught as computer system) comprising:

a first storage device configured to store first contents in a protected area, store a copy of said first contents in a user area and store second contents in the user area (Kawano, par. [0032], hard disk drive 11 has user area and PARTIES partition and both partitions store copies of the data stored in each other).

Kawano fail to teach a directory for storing the data, Whiting however teaches backup directory for storing backup data in the storage device (Whiting, figs. 2 and 3, pars. [0033] – [0035]). It would have been obvious to one having ordinary skill in the art

at the time of the invention to provide directory for backup data as taught by Whiting in the system of Kawano for easy management of data because directories and folders allows grouping of similar data and thus data can be easily managed.

Kawano further teaches a processor (inherent in computer system) configured to boot to either the user area of the first storage device or the protected area of the first storage device (Kawano, par. [0043]);

wherein the storage device (fig. 1, item 11), comprises instructions, which when executed on the processor (par. [0029] and [0030]) comprise:

booting to the protected area and copying contents of the protected area of the first storage device to the directory (Whiting teaches a backup directory) designated for said first contents within user area of the first storage device (par. [0042], taught as BIOS boots the special operating system from PARTIES partition and pars. [0016] and [0045], data/information is passed between partitions);

booting to the user area of a first storage device (Kawano, par. [0043]).

Kawano and Whiting fail to teach saving user area to a backup storage device. Maffezzoni teaches copying data to multiple areas (partitions) of the hard disk such that if one of the multiple partitions is damaged, the system remains operational from other partition of the same hard disk and Maffezzoni also teaches backing up data to another storage device, because in case of physical damage to entire disk, data is restored from second storage device (Maffezzoni, col. 3, lines 13-22, col. 8, lines 12-27). It would have been obvious to one having ordinary skill in the art at the time of invention to back up the user/protected area data to second storage device as taught by Maffezzoni in the

system of Kawano and Whiting, because data can be retrieved in case of physical damage to the first storage device (Maffezzoni, col. 8, lines 12-27).

Kawano, Whiting and Maffezzoni fail to teach copying both protected area and user area to another disk, but Maffezzoni teaches that if there is a physical crash of the hard disk then data can not be recovered from the hard disk (Maffezzoni, col. 8, lines 15-27), accordingly, it would have obvious to one having ordinary skill in the art at the time of invention to back up the user data as well as protected area to second storage device so that the data can be retrieved in case of physical damage to hard disk (Maffezzoni, col. 8, lines 15-27 and also see present application specification page 2, lines 19-25).

Maffezzoni also teaches a second storage device as explained above accordingly Maffezzoni teaches communication means for communicating to and from a second storage device.

As per claim 36, Kawano teaches booting to the protected area prior to the copying and rebooting to user area after the copying and before saving (par. [0043]).

As per claim 37, Kawano teaches storing software modules on different storage devices or on network system (par. [0030]). It would have been obvious to one having ordinary skill in the art at the time of the invention to download software from different storage device (network) to be executed by computer system to achieve the functionality of Kawano and communication means are inherent in the network.

***Conclusion***

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAUSHIKKUMAR PATEL whose telephone number is (571)272-5536. The examiner can normally be reached on 7.30 am - 4.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hyung Sough can be reached on 571-272-6799. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Hyung S. Sough/  
Supervisory Patent Examiner, Art Unit 2188  
09/29/08

KAUSHIKKUMAR PATEL  
Examiner  
Art Unit 2188

/kmp/  
September 25, 2008